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E-FILED ON APRIL 21, 2006

and

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 Nevada Bar No. 0399  
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 Nevada Bar No. 5423  
 Schwartzer & McPherson Law Firm  
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 Attorneys for Debtors

## UNITED STATES BANKRUPTCY COURT

## DISTRICT OF NEVADA

In re:

Case Nos. BK-S-06-10725 LBR  
 Chapter 11

USA COMMERCIAL MORTGAGE  
 COMPANY,

**MODIFIED MOTION OF THE DEBTOR  
 PURSUANT TO 11 U.S.C. §§ 363(B) AND  
 105(a) FOR AUTHORITY TO PAY  
 ADDITIONAL PRE-PETITION WAGES  
 TO SEVEN KEY EMPLOYEES**

Debtor.

Date: OST PENDING  
 Time: OST PENDING

USA COMMERCIAL MORTGAGE COMPANY ("Debtor"), by and through its counsel  
 Lenard E. Schwartzer, Esq. of the Schwartzer & McPherson Law Firm, submits this modified  
 motion pursuant to 11 U.S.C. §§ 363(b) and 105(a) for Authority to Pay Additional Pre-Petition  
 Wages to Seven Key Employees (the "Motion"). The aggregate amount of additional pre-petition  
 wages that would be paid to these employees is \$10,250 plus applicable taxes and benefits. In  
 support of this Motion the Debtor states as follows.

## POINTS AND AUTHORITIES

### Facts

1. On April 17, 2006, this Court authorized the payment of pre-petition wages to certain employees of the Debtor. However, this Court limited such payments to \$2,500 per employee and further ordered that such payments could not be made to insiders, nor for compensation for commissions.

2. Pursuant to the Court's ruling, the Debtor has been authorized to pay \$57,494.55 to its employees, plus applicable taxes and benefits.

3. Mesirow Financial Interim Management, LLC ("Mesirow") took over the management of the Debtor's business operations on the April 13, 2006 petition date and since that time has identified seven key employees who have critical information and capabilities relating to the Debtor's business operations. These seven key employees of the Debtor include following: (1) the chief operating officer; (2) the chief information officer; (3) the controller; (4) the asset manager; (5) the chief financial officer; (6) the senior software engineer/product manager/internet developer; and (7) the senior loan accounting manager. A list of these key employees and a more detailed description of their work and qualifications is attached as **Exhibit "A"** to the Declaration of Thomas J. Allison (hereinafter "Allison Declaration") attached as **Exhibit "1"** which has been filed in support of this Motion. The payment of the additional \$10,250 in pre-petition wages to these seven key employees is both reasonable and necessary for the following reasons:

a. They have knowledge of facts and systems which are critical in assisting Mesirow (under Thomas J. Allison) to perform its duties, and in particular, determining the value of the Debtor's assets, the prior distribution of loan funds and the institution of collection actions on non-performing loans;

b. The retention of these employees is needed to keep the Debtor's books and records accurate and current, research the various loan transactions serviced by the Debtor, and maintain the IP systems and databases of investors;

c. The continued employment of these employees will give the Debtor the best chance at a successful reorganization because their expertise will be needed to bring the Debtor through the bankruptcy process as quickly and efficiently as possible; and

d. Some of these key employees may choose to leave if their wages are not paid in full, and if that happened their replacement by the Debtor will be difficult and expensive because of their expertise and unique knowledge about the Debtor's business operations and some individuals may be reluctant to work for a Debtor who is in Chapter 11.

4. None of the key employees have been owners of the Debtor or its affiliates, nor have they been officers of the Debtor or its affiliates, except for Victoria Loob who is the Secretary-Treasurer of the Debtor.<sup>1</sup>

5. The total amount of the additional pre-petition payment requested for all of these key employees totals \$10,250 plus applicable taxes and benefits. See **Exhibit "B"** attached to Allison Declaration.

## MEMORANDUM OF LAW

### A. LEGAL STANDARD TO BE APPLIED

It is well established that the Bankruptcy Court is a court of equity and that its proceedings are inherently proceedings in equity. See Young v. Higbee Co., 324 U.S. 204, 214, 65 S.Ct. 594, 599, 89 L.Ed. 890 (1945); Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939). Courts have utilized their equitable powers to allow a debtor to pay employees' pre-petition wages through the application of what is commonly referred to as the "necessity of payment rule" wherein a court can authorize a debtor to pay prepetition claims where "such payment is essential to the continued operation of the debtor." In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); See In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989); In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992).

<sup>1</sup> Rob Hilson, who is one of the seven key employees, holds the title of Chief Financial Officer. However, a review of the board minutes does not indicate that he was ever appointed by the Board as an officer of the Debtor.

1 Section 507(a)(3) of the Bankruptcy Code, grants a debtor's employees' claims for wages  
 2 and salaries earned within ninety days before the date of filing unsecured priority status to the  
 3 extent of \$10,000 per employee. 11 U.S.C. § 507(a)(3). The rationale in making these payments  
 4 to a debtor's employees is that the payments are necessary "to permit the effectuation of the  
 5 rehabilitative purposes of the Bankruptcy Code." Sharon Steel Corp., 159 B.R. 730, 736 (Bankr.  
 6 W.D. Pa. 1993). See Ionosphere, 98 B.R. at 176-177.

#### 7 B. APPLICATION OF THIS STANDARD

8 As set forth above, Mesirow has identified seven key employees whose continued  
 9 employment is critical to continuing the Debtor's business operations, and ultimately to the  
 10 Debtors' successful reorganization. If these key employees were to leave at this time it could be  
 11 difficult and expensive to replace these employees which could result in a negative impact on the  
 12 Debtor, and the value of its assets and businesses. Accordingly, the relief sought hereby is in the  
 13 best interest of the Debtors' estates and their creditors, and will allow the Debtors to continue to  
 14 operate their business with minimal disruption and proceed with the important task of stabilizing  
 15 their operations.

#### 16 CONCLUSION

17 WHEREFORE, the Debtor requests authority to pay the seven key employees identified  
 18 above an additional \$10,250 (plus applicable taxes and benefits) for pre-petition wages.

19 DATED: April 21, 2006

20  
 21 

22 Leonard E. Schwartz, Esq.  
 23 Jeanette E. McPherson, Esq.  
 24 Schwartz & McPherson Law Firm  
 25 2850 South Jones Blvd., Suite 1  
 26 Las Vegas NV 89146  
 27 Proposed Attorneys for Debtor  
 28

# **EXHIBIT “1”**

Annette W. Jarvis, Utah Bar No. 1649  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
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Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF THOMAS J.  
ALLISON IN SUPPORT OF  
MODIFIED MOTION OF THE  
DEBTOR PURSUANT TO 11 U.S.C. §§  
363(B) AND 105(a) FOR AUTHORITY  
TO PAY ADDITIONAL PRE-  
PETITION WAGES TO SEVEN KEY  
EMPLOYEES**

Date: OST PENDING  
Time: OST PENDING

SCHWARTZ & MCPHERSON LAW FIRM  
2850 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5308  
Tel: (702) 228-7590 • Fax: (702) 892-0122



1 I, Thomas J. Allison, hereby declare, verify and state as follows:

2 1. I make this Declaration in support of the Modified Motion of the Debtor Pursuant  
3 to 11 U.S.C. §§ 363(b) and 105(a) for Authority to Pay Additional Pre-Petition Wages to Seven  
4 Key Employees (the "Motion"). My Declaration is based upon personal knowledge of the facts  
5 set forth herein.

6 2. I am currently Executive Vice President and Senior Managing Director of Mesirow  
7 Financial Interim Management, LLC ("MFIM"). MFIM has been employed by the Debtors  
8 (defined below) to serve as financial advisors to evaluate restructuring alternatives, including  
9 filing a petition for relief under Chapter 11, Title 11 of the United States Code, for USA  
10 Securities, LLC, USA Capital Reality Advisors, LLC, USA Commercial Mortgage Company,  
11 USA Capital Diversified Trust Deed Fund, LLC, and USA Capital First Trust Deed Fund, LLC  
12 (collectively, the "Debtors"). As an officer of MFIM, I have acted as lead consultant on the  
13 engagement.

14 3. Pursuant to a resolution entered into by each of the Debtors, in the event of a  
15 bankruptcy filing, the Debtors' current managers determined that it would be in the best interests  
16 of the Debtors to immediately appoint me as the sole Manager of the four Debtors who are limited  
17 liability companies (USA Securities, USA Realty, Diversified Fund, and First Deed Fund), and as  
18 the president of the corporate debtor USA Commercial, with full authority to oversee the  
19 restructuring and reorganization of the Debtors' unified business enterprise, to make all business  
20 and financial decisions for the Debtors, including taking control of all bank accounts and other  
21 assets of these Debtors.

22 4. On April 13, 2006, the Debtors filed voluntary petitions for bankruptcy in this  
23 Court and in accordance with the above referenced resolutions, MFIM took over the management  
24 of the Debtors.

25 5. On April 17, 2006, the Court authorized the payment of pre-petition wages to  
26 certain employees of the Debtors, including USA Commercial. However, this Court limited such  
27 payments to \$2,500 per employee and further ordered that such payments could not be made to  
28 insiders, or for any commissions.

1           6. Pursuant to the Court's ruling, USA Commercial has been authorized to pay  
2 \$57,494.55 to its employees, plus applicable taxes and benefits.

3           7. However, I have identified seven key employees who have critical information and  
4 capabilities relating to USA Commercial's business operations. The seven key employees of  
5 USA Commercial include following: (1) the chief operating officer; (2) the chief information  
6 officer; (3) the controller; (4) the asset manager; (5) the chief financial officer; (6) the senior  
7 software engineer/product manager/internet developer; and (7) the senior loan accounting  
8 manager. A list of these key employees and a more detailed description of their work and  
9 qualifications is attached hereto as **Exhibit "A."**

10           8. The continued employment and payment of additional pre-petition wages to these  
11 seven key employees is both reasonable and necessary for the following reasons:

12           a. They have knowledge of facts and systems which are critical in assisting  
13 Mesirow to perform its duties, and in particular, determining the value of USA  
14 Commercial's assets, the prior distribution of loan funds and the institution of collection  
15 actions on non-performing loans;

16           b. The retention of these employees is needed to keep USA Commercial's  
17 books and records accurate and current, research the various loan transactions, and  
18 maintain the IP systems and databases of investors;

19           c. The continued employment of these employees will give USA Commercial  
20 the best chance at a successful reorganization because their expertise will be needed to  
21 bring USA Commercial through the bankruptcy process as quickly and efficiently as  
22 possible; and

23           d. Some of these key employees may choose to leave if their wages are not  
24 paid in full, and if that happened their replacement by USA Commercial will be difficult  
25 and expensive because of their expertise and unique knowledge about USA Commercial's  
26 business operations and some individuals may be reluctant to work for USA Commercial  
27 who is in Chapter 11.  
28



1           9.     None of the key employees have been owners of USA Commercial or its affiliates,  
2 nor have they been officers of USA Commercial or its affiliates, except for Victoria Loob who is  
3 the Secretary-Treasurer of USA Commercial.

4           10.    The total amount of the additional pre-petition payment requested for all of these  
5 key employees totals \$10,250. See Exhibit "B" hereto.

6           I declare under penalty of perjury that the foregoing is true and correct to the best of my  
7 knowledge, information and belief.

8 Dated: April 21<sup>st</sup>, 2006.



Thomas J. Allison  
Senior Managing Director  
Mesirow Financial Interim Management, LLC  
Chicago, IL

SCHWARTZ & MCPHERSON LAW FIRM  
2850 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5308  
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# **EXHIBIT “A”**

**Tom Barry**

**Asset Management**

Primary responsibilities include communicating with borrowers and disbursement companies to facilitate the funding and disbursement of loan funds as well as the reporting and monitoring of loan fundings, repayments, and valuations. Monitor the repayment of principal and interest as payments are made and/or collateral is sold and released; this includes assisting with the collection of the funds and reconveyance of any property sold and/or refinanced as well as assisting in the application of those funds (i.e. interest, principal, fees)

Salary: \$65,000

**Robert Hilson**

**Title: Chief Financial Officer**

Nevada resident since 1995 joined the company in 2002. He brings with him over 30 years as a financial and operations manager in the banking, healthcare, manufacturing, and employee leasing industries. In-depth background includes, designing financial and operational systems, computers, internal controls, and the recruitment and training of personnel. Mr. Hilson obtained a Bachelors of Science Degree in Accountancy at California State University, Long Beach.

Salary: \$108,000

**Matt Lebo - Senior Software Engineer / Product Manager / Internet Developer**

Design, development, and implementation of custom software application. Supervision of junior programmers. Create user documentation. Provide user training.

USA Capital runs its core business on custom software, iTrack. iTrack manages all the day to day operations from the managing investors, lead generation, contact management, loan servicing, loan management, borrower invoicing and processing, agings, internal reporting, internet / website management for customers as well as internal applications for Purchase Ordering and Contact Management. These are the core applications that allow USA Capital to manage its loans and investors.

Requires excellent technical skills in Microsoft C#, .NET Administration, XML development, Internet Technologies, Client Server systems, SQL Server, VB and VB.NET.

Salary: \$75,000

**Vicki Loob, Senior Loan Accounting Manager** – Vicki has been with USA

Commercial Mortgage for more than 15 years and is responsible for receivables and payables for the collection trust account which invoices and collects money from borrowers and processes interest and principal repayments to investors. She also holds an additional role as Human Resources Manager and is responsible for all payroll and benefits administration and reporting. (A review of similar positions on [www.executiveregistry.com](http://www.executiveregistry.com) shows base salaries for her main job starting at \$100,000.)

Salary: \$108,000.

**Mark Olson, Chief Operating Officer** – Mark was named COO when Tom Allison and the Mesirov team were retained. He had been Director of Marketing. As COO, his job is to run the day-to-day operations of USA Commercial Mortgage Company and take a principal role in the work required to take the company through and out of Chapter 11. He is responsible for approximately 30 employees in the Las Vegas office. (A search of open COO positions across the US through [www.executiveregistry.com](http://www.executiveregistry.com) reveals no COO position anywhere in the U.S. less than \$125,000 per year in annual salary.)

Salary: \$120,000

**A. Faisal Siddiqui - Chief Information Officer**  
Bachelors of Science in Computer Science, UNLV  
Masters in Business Administration, UNLV

Overall Management of Information Technology Department. Manage staff. Set strategic direction. Negotiate vendor contracts. Oversee technology implementation: servers, desktops, wireless, networking, VoIP, telephony, internet, applications, reporting.

USA Capital employs a diverse range of cutting edge technology products. It manages 20 systems servers and over 60 desktops that cover the gamut of processes including, but not limited to, email messaging, system files, desktop connectivity, application management, system security, document management, mobile workforce, secure enterprise wireless, advanced Voice over IP telephony with full system integration, internal reporting, online client access, website management, redundant systems, power management, HVAC controls, disaster recovery systems, database management, budgeting, as well as mentoring staff.

Salary: \$105,000

**LeAnn Weese**  
**Title: Controller**

A recent resident of Nevada joined the company in 2005. She brings experience as a CPA registered in the state of Washington with over 20 years experience in the accounting / finance industry. Prior notable positions held include Assistant Vice President and Treasurer at Unigard Insurance Co. and Senior Accountant at Ernst & Young. Ms. Weese received a Bachelor of Arts in Accounting and Management at Central Washington University, Lynnwood, WA.

Salary: \$85,000

# **EXHIBIT “B”**

## USACMC

## Exhibit B

Payroll for Period Ending 4/20/06 for Reconsideration

Employee	Type	Original Amount Requested	Amount Allowed 4/17/2006	Position	Additional Amount Requested
A F Siddiqui	Salary	\$ 4,375.00	\$ 2,500.00	CIO	\$ 1,875.00
LeAnn Weese	Salary	3,541.67	2,500.00	Controller	1,041.67
Mark Olson	Contract	5,000.00	2,500.00	COO	2,500.00
Matt Lebo	Salary	3,125.00	2,500.00	Software Developer	625.00
Rob Hilson	Salary	4,500.00	2,500.00	CFO	2,000.00
Tom Barry	Salary	2,708.33	2,500.00	Asset Mngmt	208.33
Vicki Loob	Salary	4,500.00	2,500.00	HR and Loan Servicing	2,000.00
Other salaried Employees	Salary	44,740.05	35,061.05		-
Other Hourly		4,933.50	4,933.50		-
Other Contract		20,599.63	0.00		-
Commissions		84,624.90	0.00		-
Insiders		23,684.69	0.00		-
<b>TOTAL of PAYROLL</b>		<b>\$ 206,332.77</b>	<b>\$ 57,494.55</b>		<b>\$ 10,250.00</b>